Before the Federal Communications Commission Washington, D.C. 20554

) File Number EB-02-LA-310
NAL/Acct. No.200432900003
FRN 0009412131

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 31, 2004

By the District Director, Los Angeles Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Stanley Mark Mayo ("Mayo") apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act")¹ by operating a radio station on the frequencies 660 kHz and 91.3 MHz without authorization from the Federal Communications Commission ("Commission"). We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), that Stanley Mark Mayo is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

- 2. On October 7, 2002, the Commission's Los Angeles Office received information that an unlicensed AM station, using call letters KRSX, was operating on 660 kHz in Victorville, California. A search of the Commission's licensee database revealed no license issued for the operation of an AM broadcast station on 660 kHz in Victorville, California, and no broadcast authorization issued under call sign KRSX.
- 3. On October 24, 2002, agents from the Commission's Los Angeles Office conducted an investigation and detected radio transmissions on the frequency 660 kHz in Victorville. Using radio direction finding techniques, the agents determined that the transmissions were emanating from 16743B D Street, Victorville. The front door was marked with the following wording: Route 66 Radio KRSX AM 660.

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¹ 47 U.S.C. § 301.

² 47 U.S.C. §503(b).

- 4. Still on October 24, 2002, the agents inspected the radio station broadcasting on 660 kHz at 16743B D Street. The agents spoke to Mayo, who stated that he owned the radio, and that the station was operating under Part 15.³ The agents inspected the radio station and determined that it was not operating in accordance with the FCC Rules under Part 15, therefore, a license was required to operate the station.⁴ Specifically, the transmitter was not certificated⁵ for use under Part 15 and the total length of the station's transmission line and antenna exceeded 3 meters.⁶ The agents issued Mayo a Notice of Unlicensed Radio Operation warning letter.
- 5. The following day, on October 25, 2002, Mayo called the Commission's Los Angeles Office and spoke to the District Director. Mayo acknowledged that the station was not operating with a Part 15 transmitter and requested a waiver to continue operating with the Part 73 transmitter. The waiver was not granted.
- 6. On November 1, 2002, the Commission's Los Angeles Office mailed via certified and regular mail a Notice of Unlicensed Radio Operation letter to Mayo regarding the station's operation on 660 kHz. No response to this Notice was received.
- 7. On May 20, 2003, agents from the Commission's Los Angeles Office conducted an investigation and identified transmissions on 660 kHz emanating from 16743B D Street in Victorville. The agents took a field strength measurement of the signal on 660 kHz and determined that the signal was 2500 times greater than the maximum permissible level for a non-licensed Part 15 transmitter. A radio station inspection determined that the transmitter was the same as that observed during the October 24, 2002, inspection. The agents issued Mayo a Notice of Unlicensed Radio Operation warning letter.
- 8. On August 15, 2003, agents from the Commission's Los Angeles Office conducted an investigation and identified transmissions on 660 kHz emanating from 16743B D Street. Additionally, the agents identified a signal on 91.3 MHz emanating from 16743B D Street in Victorville. The agents took field strength measurements of the signal on 91.3 MHz and determined that the signal was 7900 times greater than the maximum permissible level for a non-licensed Part 15 station. The Commission's records revealed that no license had been issued for the operation of a FM broadcast station at this location on 91.3 MHz.

³ Part 15 of the Commission's Rules, 47 C.F.R. 15, sets out regulations under which a transmitter may be operated without an individual license.

⁴ Section 15.1(b) of the Commission's Rules, 47 C.F.R. § 15.1(b), specifies that the operation of an intentional radiator that is not in accordance with the regulations in this part must be licensed pursuant to the provisions of section 301 of the Act.

⁵ Certification is a type of equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. Section 15.201(b) of the Commission's Rules, 47 C.F.R. § 15.201(b), requires transmitters, operating under the provisions of Part 15, to be certificated by the Commission. The transmitter must bear a label, located in a conspicuous location on the device, containing the statement specified in Section 15.19(a)(3) of the Commission's Rules, 47 C.F.R. § 15.19(a)(3). The station's transmitter did not have the required labeling specified in Section 15.19(a)(3). On the contrary, labeling on the transmitter indicated its authorization was for Part 73 of the Commission's Rules, 47 C.F.R. 73. Reserved for the Radio Broadcast Services, an individual license is required for radio stations operating under Part 73.

⁶ Section 15.219(b) of the Commission's Rules, 47 C.F.R. § 15.219(b), specifies that the total length of the transmission line, antenna and ground lead (if used) shall not exceed 3 meters. The station's transmission line and antenna was over 9 meters.

 $^{^{7}}$ Emissions from a Part 15 transmitter, operating between 490-1705 kHz, are limited in accordance with a formula provided in Section 15.209(a) of the Commission's Rules, 47 C.F.R. § 15.209(a). Applying the formula, emissions on 660 kHz are limited to 36 μV/m at thirty meters. The measured field strength of the station's signal exceeded the permissible level by 2500 times.

 $^{^{8}}$ Section 15.239(b) of the Commission's Rules, 47 C.F.R. \S 15.239(b), provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 μ V/m at three meters.

- 9. Still on August 15, 2003, the agents inspected the radio stations broadcasting on 660 kHz and 91.3 MHz at 16743B D Street in Victorville. The 660 kHz transmitter was the same as that observed during the previous inspections. The 91.3 MHz transmitter was not authorized for use under Part 15. The agents issued Mayo two Notices of Unlicensed Radio Operation warning letters; one for operation on 660 kHz and the other for operation on 91.3 MHz.
- 10. Still on August 15, 2003, the agents took a field strength measurement of the signal on 660 kHz and determined that the signal was 3200 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.
- 11. On March 22, 2004, agents from the Commission's Los Angeles Office conducted an investigation and identified transmissions on both 660 kHz and 91.3 MHz emanating from 16743B D Street, Victorville, California. The agents took a field strength measurement of the signal on 660 kHz and determined that the signal was 3200 times greater than the maximum permissible level for a non-licensed Part 15 transmitter. The agents took field strength measurements of the signal on 91.3 MHz and determined that the signal was 7900 times greater than the maximum permissible level for a non-licensed Part 15 station.

III. DISCUSSION

- 12. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the act more than once or for more than one day. 10
- 13. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On October 24, 2002, May 20, 2003, August 15, 2003, and March 22, 2004, Mayo operated radio transmitting equipment at 16743B D Street, Victorville, on the frequency 660 kHz without the required Commission authorization. On August 15, 2003 and March 22, 2004, Mayo operated radio transmitting equipment at 16743B D Street, Victorville, on the frequency 91.3 MHz without the required Commission authorization.
- 14. Based on the evidence before us, we find Mayo willfully and repeatedly violated Section 301 of the Act by operating radio transmission apparatus without a license on 660 kHz and 91.3 MHz.
- 15. Pursuant to The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, (Forfeiture Policy Statement), 11 and Section

⁹ 47 U.S.C. § 503(b).

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term "repeated", when use with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

¹¹ The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

1.80(b)(4) of the Commission's Rules,¹² the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act¹³ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Considering the entire record and applying the factors listed above, a \$20,000 forfeiture is warranted.

IV. ORDERING CLAUSES

- 16. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules, Stanley Mark Mayo is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Section 301 of the Act for operating radio transmitting equipment without the required Commission authorization.¹⁴
- 17. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Mayo SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.
- 18. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554. 15
- 19. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.
- 20. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.
- 21. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate

¹² 47 C.F.R. § 1.80(b)(4).

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80

¹⁵ See 47 C.F.R. § 1.1914.

whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

22. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Stanley Mark Mayo, 16743B D St., Victorville, CA 92392.

FEDERAL COMMUNICATIONS COMMISSION

Catherine Deaton
District Director, Los Angeles Office
Enforcement Bureau

Enclosure: FCC List of Small Entities, October 2002